

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10321 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AMARSING PARBHATSING RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive

detention dated 25th November, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order. Four offences punishable under the Bombay Prohibition Act are registered against the petitioner, one of which is pending trial. In each of the cases, the petitioner was found to be in possession of country liquor. Besides, two individuals, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on the public tranquility and the even tempo of life and have particularly referred to the incidents of 17th October, 1998 and 22nd October, 1998 respectively.

It is submitted that in respect of neither of the offences registered against the petitioner, the petitioner has been furnished the reports of the chemical examination of the liquor allegedly recovered from the petitioner. It is contended that such reports are vital documents and ought to have been taken into consideration by the Detaining Authority and ought to have been supplied to the petitioner as well. It is a settled proposition of law that the report of the chemical examination of the liquor allegedly seized from the detenu is a vital document and ought to be taken into consideration by the Detaining Authority while recording the subjective satisfaction. Such report should also be furnished to the detenu to enable him to make an effective representation. This having not been done, the subjective satisfaction recorded by the Detaining Authority is vitiated and so also the order of detention.

Petition is, therefore, allowed. The order dated 25th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

.....

JOSHI*